

1 The impetus of the special master proceedings was the discovery that the OCSD's inmate
2 telephone services vendor, GTL, had failed to carry over, during an upgrade process, slightly more than
3 1,300 phone numbers that were previously stored in the GTL database as do-not-record because they
4 were phone numbers associated with an attorney. After GTL updated its database to add the 1,300 plus
5 numbers to the list of telephone calls that are not recorded (the "List"), GTL conducted a search of its
6 recordings database against the updated List and determined that it had about 1,079 recordings of calls
7 potentially containing attorney-client privileged communications.

8 **II. What to Do when New Recordings Come to Light?**

9 OCSD recently discovered recordings made by different inmates to defense attorneys. Upon
10 discovering these recordings, OCSD took immediate action to add the attorney's phone number to the
11 List to prevent future recordings of calls by inmates to the defense attorneys in question and directed
12 GTL to "sequester" the recordings so that OCSD personnel would have no access to the recordings.
13 OCSD has every reason to expect that as time goes on, OCSD will learn of other attorneys whose phone
14 numbers are not included on the List and, therefore, are recorded, and discovered inadvertently by
15 OCSD for some reason or another. Thus, OCSD is seeking clarification from this Court as to the scope
16 of the Special Master's jurisdiction, as time goes on, over such recordings.

17 To be clear, it has always been OCSD policy to provide inmates the opportunity to have
18 privileged communications with their attorneys. To the Sheriff's knowledge, no OCSD staff have ever
19 intentionally recorded, nor listened to calls between inmates and their attorneys. However, in light of
20 the way the phone system works, and the fact that an attorney and/or inmate must request a number be
21 added to the List, it is unavoidable for some recordings to be inadvertently made by GTL's system. If a
22 phone number is not on the List, the inmate and the attorney should hear a recording alerting them to the
23 fact that their call is subject to recording/monitoring. If the attorney and/or inmate do not proactively
24 request to have the attorney's number made private, OCSD has no basis to know the recording should
25 not be made. Until OCSD inadvertently discovers the existence of such recordings, there is no way to
26 resolve the problem.

27 Given the Court's orders in the special master proceedings, the OCSD seeks clarification on
28 what to do with any newly discovered recordings. The OCSD is mindful that it may discover recordings

1 years from now and is unsure how to proceed in light of the Court's special master orders.

2 **III. Request for Clarification.**

3 As OCSD understands it, the special master is reviewing recordings from two lists and that the
4 recordings on the two lists may overlap:

5 1. A list of 1,079 recordings that were not accessed by the OCSD or GTL; and
6 2. A list of 26 recordings that were accessed in some manner (but not necessarily listened
7 to) by the OCSD or GTL.¹

8 However, it is unclear from this Court's prior order, whether the special master will maintain
9 jurisdiction over *any* recording *ever* discovered in perpetuity that appears to have been made by an
10 inmate that the Orange County Jails to an attorney's number. The OCSD is eager to resolve this issue to
11 the satisfaction of the Court and seeks guidance on how to proceed. Specifically, the OCSD requests
12 that Court clarify:

13 1.) If the OCSD discovers a recording that exists on GTL's database which appears to have been
14 made by an inmate to a phone number that is subsequently identified as an attorney's phone, but the
15 recording has not been accessed in anyway by any OCSD personnel, except to determine that it
16 exists, what should be done with this information?
17 2.) If the OCSD discovers a recording that exists on GTL's database which appears to have been
18 made by an inmate to a phone number that is subsequently identified as an attorney's phone, and the
19 recording has been accessed by OCSD personnel, what should be done with this information?
20 a. If the OCSD discovers a recording that exists on GTL's database which appears to have
21 been made by an inmate to a phone number that is subsequently identified as an attorney's
22 phone, and the OCSD has a copy of the recording, what should be done with this
23 information?

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27 ¹ There are 26 recordings that were accessed and part of the special master's review.
28 These recordings were not part of 10 cases, that the court specifically excluded from the special
master's jurisdiction. These 26 recordings do not have PINs and, thus, the inmate cannot be
identified.

DATED: September 20, 2018

Respectfully submitted,

LEON J. PAGE, COUNTY COUNSEL
and ANNIE LOO, DEPUTY

By 
ANNIE LOO, Deputy

Attorneys for ORANGE COUNTY SHERIFF-
CORONER DEPARTMENT

EXHIBIT A

AUG 20 2018

DAIR H. YAMASAKI, Clerk of the Court
By: *R. PEACE*, DEPUTY

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

3
4 PEOPLE OF THE STATE OF CALIFORNIA,
5 *Plaintiff*,
6 vs.
7 JOHN DOES 1-58,
8 *Defendant*.

} Case No.: M-17638

} [PROPOSED] ORDERS

9 TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE; ORANGE COUNTY
10 COUNSEL; ORANGE COUNTY SHERIFF'S DEPARTMENT; ANY OUTSIDE LAW
11 ENFORCEMENT AGENCY IN ORANGE COUNTY; GLOBAL TEL-LINK
("GTEL") TELEPHONE COMPANY:

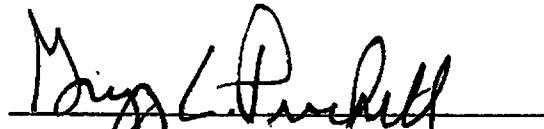
12
13 (1) This Court hereby appoints a special master pursuant to California Penal Code §
14 1524 and State Bar Rule 7.100.
15 (2) The Court orders the Orange County District Attorney's Office, the Orange County
16 Counsel Office, the Orange County Sheriff's Department, "GTEL" Global Tel-
17 Link Telephone Company, and any law enforcement or prosecution agency, not to
18 listen to, review, or otherwise access any recorded attorney-client privileged phone
19 calls.
20 (3) The Court orders any law enforcement agency which knows or suspects that it may
21 have obtained attorney-client privileged recordings to return hard copy recordings
22 to the appointed Special Master. Any digital copies must be deleted/destroyed.

23 **THIS ORDER IS NOT TO AFFECT ANY ORDER MADE IN THE CASE
24 OF PEOPLE V. WARING (17WF2266).**

25 IT IS SO ORDERED.

26 Date: AUG 20 2018

27 *3:54 p.m.*



28 Judge Gregg L. Prickett

JUDGE OF THE SUPERIOR COURT

PROOF OF SERVICE

I do hereby declare that I am a citizen of the United States employed in the County of Orange, over 18 years old and that my business address is 10 Civic Center Plaza, 4th Floor, Santa Ana, California 92701. I am not a party to the within action.

On September 20, 2018, I served the foregoing **REQUEST FOR CLARIFICATION ON THE SPECIAL MASTER'S JURISDICTION** on all other parties to this action by placing a true copy of said document in a sealed envelope in the following manner:

(BY U.S. MAIL) I placed such envelope(s) addressed as shown below for collection and mailing at Santa Ana, California, following our ordinary business practices. I am readily familiar with this office's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

(BY OVERNIGHT DELIVERY) I placed such envelope(s) addressed as shown below for collection and delivery with delivery fees paid or provided for in accordance with this office's practice. I am readily familiar with this office's practice for processing correspondence for delivery the following day by overnight delivery.

(BY FACSIMILE) I caused such document to be telefaxed to the addressee(s) and number(s) shown below, wherein such telefax is transmitted that same day in the ordinary course of business.

(BY PERSONAL SERVICE) I caused such envelope(s) to be hand-delivered to the addressee(s) shown below.

(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(FEDERAL) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Anna Z. Strahan
Anna Z. Strahan

NAME AND ADDRESS TO WHOM SERVICE WAS MADE

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